BILL NO. S-90-07- 33

SPECIAL ORDINANCE NO. S-196-90

AN ORDINANCE approving Contract FOR RES. #215-89, **PEMBERTON DRIVE ORNAMENTAL STREET LIGHTING PROJECT** between **WEIKEL LINE COMPANY** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RES. #215-89, PEMBERTON DRIVE ORNAMENTAL STREET LIGHTING PROJECT** by and between **WEIKEL LINE COMPANY** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the installation of an underground ornamental lighting system on Pemberton Drive;

involving a total cost of Eleven Thousand One Hundred Twenty and no/100 Dollars ($11,120.00).

SECTION 2. Prior Approval has been requested from Common Council on June 26, 1990. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay

J. Timothy McCaulay, City Attorney

CONTRACT NO. 215-89

BOARD ORDER NO. 170-89 WORK ORDER NO. 56997

THIS CONTRACT made and entered into in triplicate this 11 day of July, 1990, by and between Weikel Line Company, herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following: Resolution #215-89
Pemberton Drive (Lake Avenue to Forest Avenue)

Street Light Improvement

all according to specifications, plans, and Drawing No. ______

Sheets 1 thru 3, and do everything required by this contract and

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $ 11,120.00. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplies to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.
Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgement of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTORS shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto: it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 215-89.
b. Instructions to Bidders for Contract No. 215-89.
c. Contractor's Proposal Dated June 13, 1990.
d. Ft. Wayne Eng. Dept. Drawing # ________________.
e. Supplemental Specifications for Contract No. 215-89.
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78(as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. EBE Commitment Form.
o. Street Barricade Maintenance Sheet
p. ________________________________

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 120 consecutive calendar days after having been ordered (Notice to Proceed) by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: [signature]

_______________, President

BY: _______________

_______________, Secretary

CITY OF FORT WAYNE, INDIANA

BY: ______________________

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

____

Charles E. Layton
Director of Public Works

____

Douglas M. Lehman
Director of Administration & Finance

____

Michael McAlexander
Director of Public Safety

ATTEST:

____

Pat J. Crick, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 28th day of June, 1990, personally appeared the within named Don Waldrop and ________________ who being by me first duly sworn upon their oaths say that they are the Vice President and Secretary respectively, of Weikel Line Company and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Don Waldrop __________ and ____________________________ for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Tim A. Warren

NOTARY PUBLIC

TIM A. WARREN
NOTARY PUBLIC STATE OF INDIANA
ALLEN COUNTY
MY COMMISSION EXP SEPT 25,1993

____

Type or Print Name of Notary

MY COMMISSION EXPIRES: ____________

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 11th day of July, 1990 personally appeared the within name Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, Douglas M. Lehman and Michael McAlexander, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Pat J. Crick, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name affixed my official seal.

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

Carolyn S. Eschmann
NOTARY PUBLIC

____
Type or Print Name of Notary

My Commission Expires:__________

Approved by the Common Council of the City of Fort Wayne on day of __________, 19__.

Special Ordinance No.__________________

CITY OF FORT WAYNE, INDIANA

BY: ____________________

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

____

Charles E. Layton
Director of Public Works

____

Douglas M. Lehman
Director of Administration & Finance

____

Michael McAlexander
Director of Public Safety

ATTEST:

____

Pat J. Crick, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:
SS:
COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 28th day of June, 1990, personally appeared the within named Don Waldrop and ______________ who being by me first duly sworn upon their oaths say that they are the Vice President and Secretary respectively, of Weikel Line Company and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Don Waldrop ________ and ______________________ for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Tim A. Warren
NOTARY PUBLIC

TIM A. WARREN
NOTARY PUBLIC STATE OF INDIANA
ALLEN COUNTY
MY COMMISSION EXP SEPT 25,1993

Type or Print Name of Notary

MY COMMISSION EXPIRES: ____________

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 11th day of July, 1990, personally appeared the within name Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, Douglas M. Lehman and Michael McAlexander, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Pat J. Crick, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name affixed my official seal.

Carolyn S. Eschmann
NOTARY PUBLIC

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

____
Type or Print Name of Notary

My Commission Expires:____________

Approved by the Common Council of the City of Fort Wayne on day of ______________, 19__.

Special Ordinance No.____________________

UNITED PACIFIC INSURANCE COMPANY

HOME OFFICE, FEDERAL WAY, WASHINGTON

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That the UNITED PACIFIC INSURANCE COMPANY, a corporation duly organized under the laws of the State of Washington, does hereby make, constitute and appoint Donald R. Rush, Gerald C. Kramer, Jr., Fred L. Tagtmey Walter E. Manske, Louis H. Andrews, William G. Niezer and George A. Hannin, individually, of Fort Wayne, Indiana

its true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed any and all bonds and undertakings of Suretyship, ____________

and to bind the UNITED PACIFIC INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the UNITED PACIFIC INSURANCE COMPANY and sealed and attested by one other of such officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of Article VII of the By-Laws of UNITED PACIFIC INSURANCE COMPANY which became effective September 7, 1978, which provisions are now in full force and effect, reading as follows:

ARTICLE VII – EXECUTION OF BONDS AND UNDERTAKINGS

1. The Board of Directors, the President, the Chairman of the Board, any Senior Vice President, any Vice President or Assistant Vice President or other officer designated by the Board of Directors shall have power and authority to (a) appoint Attorneys-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney-in-Fact at any time and revoke the power and authority given to him.

2. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

3. Attorneys-in-Fact shall have power and authority to execute affidavits required to be attached to bonds, recognizances, contracts of indemnity or other conditional or obligatory undertakings and they shall also have power and authority to certify the financial statement of the Company and to copies of the By-Laws of the Company or any article or section thereof.

This power of attorney is signed and sealed by facsimile under and by authority of the following Resolution adopted by the Board of Directors of UNITED PACIFIC INSURANCE COMPANY at a meeting held on the 5th day of June, 1979, at which a quorum was present, and said Resolution has not been amended or repealed:

> "Resolved, that the signatures of such directors and officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the UNITED PACIFIC INSURANCE COMPANY has caused these presents to be signed by its Vice President, and its corporate seal to be hereto affixed, this 15th day of August 19 83

UNITED PACIFIC INSURANCE COMPANY

____
Vice President

STATE OF Pennsylvania
COUNTY OF Philadelphia } ss.

On this 15th day of August , 1983 , personally appeared Raymond MacNeil

to me known to be the Vice-President of the UNITED PACIFIC INSURANCE COMPANY, and acknowledged that he executed and attested the foregoing instrument and affixed the seal of said corporation thereto, and that Article VII, Section 1, 2, and 3 of the By-Laws of said Company, and the Resolution, set forth therein, are still in full force.

My Commission Expires:

May 24 , 1986

____
Notary Public in and for State of Pennsylvania

Residing at Philadelphia

I, James F. Marckstein , Assistant Secretary of the UNITED PACIFIC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said UNITED PACIFIC INSURANCE COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this 28th day of June 1990.

Assistant Secretary ____________

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we THE WEIKEL LINE CO., INC. as Principal, and the UNITED PACIFIC INSURANCE COMPANY, a corporation organized under the laws of the State of Washington, and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of Eleven Thousand, One Hundred Twenty and 00/100 - ($ 11,120.00 - - - - - - - -), for the payment whereof well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The condition of the above obligation is such that

WHEREAS, the Principal did on the 28th day of June, 19 90, enter into a contract with the City of Fort Wayne to construct

Resolution #215-89 - Ornamental Street Lighting for Pemberton Drive

at a cost of $ 11,120.00 - - - - - - -, according to certain plans and specifications prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of one (1) year from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for one (1) year after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnity the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

THE WEIKEL LINE CO., INC.
(Contractor)

BY: [signature]

ITS: V-P

ATTEST:

[signature]

Pres

(Title)

UNITED PACIFIC INSURANCE COMPANY
Surety

BY: Walter E. Manske
Authorized Agent
(Attorney-in-Fact) Walter E. Manske

*If signed by an agent, power of attorney must be attached

Read the first time in full and on motion by Henry, seconded by Gibson, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on ______, the ______, day of ______, 19___, at ______ o'clock ___.M.,E.S.T.

DATED: 7-24-90

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Schmidt, seconded by Talarico, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA	✓			
HENRY				✓
LONG				✓
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 8-14-90

SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE ~~RESOLUTION~~ NO. S-196-90 on the 14th day of August, 19 90.

ATTEST SEAL

SANDRA E. KENNEDY, CITY CLERK

Charles B. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 16th day of August, 19 90 at the hour of 11:30 o'clock A .M.,E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of August, 19 90, at the hour of 9:45 o'clock A .M.,E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract for Res. #215-89, Pemberton Drive Ornamental Street Lighting

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPIS OF ORDINANCE: The Contract for Res. #215-90 is for the installation of an underground ornamental lighting system on Pemberton Drive (Lake Avenue to Forest Avenue) **PRIOR APPROVAL RECEIVED ON 6/26/90.**
Weikel Line Company is the contractor.

EFFECT OF PASSAGE: Improved lighting at above location

EFFECT OF NON PASSAGE: S-90-07-33

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $11,120.00

ASSIGNED TO COMMITTEE:

BILL NO. S-90-07-33

REPORT OF THE COMMITTEE ON FINANCE

THOMAS C. HENRY, CHAIRMAN
DONALD J. SCHMIDT, VICE CHAIRMAN
BRADBURY, BURNS, GiaQUINTA

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN (ORDINANCE) (RESOLUTION) approving Contract FOR RES. #215-89, PEMBERTON DRIVE ORNAMENTAL STREET LIGHTING PROJECT between WEIKEL LINE COMPANY and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (RESOLUTION)

~~DO PASS~~	DO NOT PASS	ABSTAIN	NO REC
[signature]			
Janet G. Bradbury			
[signature]			

DATED: 8-14-90.

Sandra E. Kennedy
City Clerk